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FORFEITURE PROCEDURE IN FEDERAL COURT: An Overview

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The views expressed are those of the author and do not necessarily reflect the views of the publisher, any federal court of the Judicial Conference of the United States, or of any of its committees.

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I. Introduction

The government's pursuit of civil forfeitures has recently drawn increased attention. Civil forfeiture filings in federal court are again on the increase after declining from their frequent invocation during the Bush administration.² Moreover, they remain a subject of attention and concern, with the Supreme Court deciding significant forfeiture cases in recent years,³ and with Congress considering various legislative proposals to curtail or expand the use of forfeitures.⁴

Both liberal and libertarian voices are calling present civil forfeiture practice a grave threat to the private property rights of the innocent, as well as the not-so-innocent.⁵ Prosecutors and law-and-order conservatives,

2. Civil "forfeiture and penalty" filings have plummeted since the start of the Clinton administration:

Year	Civil Forfeiture Filings	Proportion of All Civil Filings
1988	4,348	1.81%
1989	5,823	2.59%
1990	5,950	2.81%
1991	5,368	2.47%
1992	5,434	2.38%
1993	4,173	1.81%
1994	3,081	1.29%
1995	2,362	0.91%
1996	2,322	0.88%
1997	2,353	0.86%

Figures drawn from Table C-2A, Administrative Office of the U.S. Courts. Data on criminal forfeitures are not available at the AO, because such forfeitures are sought as part of the larger criminal case.

The decrease in civil forfeiture proceedings, according to sources at the F.B.I., is attributable to the circuit court decisions in the early 1990s that civil forfeiture could bar subsequent criminal prosecution under the double-jeopardy clause. Those decisions have now been reversed, *see* discussion of double jeopardy *infra*, and in the Spring of 1996, the Attorney General issued a statement urging more active pursuit of civil forfeitures. Accordingly, the filings picked up a little in 1997 and should be expected to continue their rebound.

3. *See, e.g.*, discussion of cases *infra* at section IV.B.6., Civil Forfeiture Procedures; Defenses.
4. As of February 19, 1998, there were 87 bills pending in Congress referencing forfeitures. Several of them are advanced as significant reform of forfeiture law. *E.g.*, H.R. 1745 (Rep. Schumer's bill "to reform asset forfeiture laws"), H.R. 428 (Rep. Pickett's bill "to provide that the property of innocent owners is not subject to forfeiture"), H.R. 1835 & 1965 (Rep. Hyde's bills "to provide a more just and uniform procedure for Federal civil forfeitures"). Most are more specific laws imposing or promoting forfeiture as a remedy or penalty. *E.g.*, S. 1148 (Sen. D'Amato's bill "to require the forfeiture of counterfeit access devices"), H.R. 2112 (Rep. Franks' bill "to increase the forfeiture penalty for telephone service slamming"), H.R. 1176 (Rep. Lowey's bill "to end the use of steel jaw leghold traps on animals" including forfeiture provisions for illegal traps and furs), and S. 263 (Sen. McConnell's bill "to prohibit the import, export, sale, purchase, possession . . . of bear viscera" providing for forfeiture of the viscera).
5. Representative Henry Hyde (R-IL), Chair of the House Judiciary Committee has broken ranks with law-and-order conservatives on this point. He has published a book critical of

as well as some "new Democrats," hail forfeitures—both civil and criminal—as a powerful tool in combating crime. It can be difficult to distill a reasoned and reasonable debate on forfeitures, particularly at a time when it is politically expedient to be "tough on crime."

This paper is intended to provide an overview of federal forfeiture procedure. It begins with historical background on the law of forfeitures and discusses some practical aspects of forfeiture procedure as it now operates in federal court. It concludes with some recommendations for the Rules Committees of the Judicial Conference of the United States, as they attempt to address the problems and deficiencies in federal forfeiture procedure, both civil and criminal.

II. Historical Background

The hoary history of forfeitures begins with some elaborate legal fictions. Forfeiture practice has its origins in biblical precepts, under which an ox that gores a person to death will be stoned "and his flesh shall not be eaten."⁶ Pre-Christian Europeans also practiced "noxal surrender," under which the instrument of accidental injury or death was surrendered to the victim or his kin.⁷ Both practices, while less than entirely reflective of the modern practice, embody the essential principle of forfeiture: not just the person but the "thing," the *res*, that violates legal and social standards may be subject to legal proceedings and consequences.

A. Deodands

The doctrines evolved over time. In English common law, the value of an object causing the death of a subject of the King was forfeited to the Crown as a deodand. Although the term "deodand" specifically means "given to God," the Crown functioned as the representative of deity. At the very least, the Crown was in a position to use the deodand to purchase Masses for the soul of the deceased.⁸ The practice endured over the years, but the rationales evolved. By the nineteenth century, the surrender of such property was justified on an entirely different ground: as a deterrent to negligence. Because there was no traditional remedy for wrongful death, the threat of forfeiture provided an incentive for the owner of a dangerous *res* to exercise a higher duty of care.⁹ Thus tort principles were invoked as a modern justification for the historical practice of forfeiture.

B. Statutory Forfeiture

Forfeitures were a part of the statutory law of admiralty as early as the Navigation Acts of the seventeenth century, which governed maritime

current forfeiture law and practice, and is among those who have introduced legislation to curb the "abuses" of the government in its pursuit of civil forfeitures. Hyde, Henry, *Forfeiting Our Property Rights: Is Your Property Safe from Seizure?* (Cato Institute, 1995).

6. Exodus 2:28 (KJV).

7. Finkelstein, *The Goring Ox: Some Historical Perspectives on Deodands, Forfeitures, Wrongful Death and the Western Notion of Sovereignty*, 46 Temp. L.Q. 169, 181 (1973).

8. Reed & Gill, *RICO Forfeitures, Forfeitable "Interests," and Procedural Due Process*, 62 N.C. L. Rev. 57, 64 (1983).

9. *Id.*

shipping. Penalties for violation of these laws included the forfeiture not only of the illegally shipped goods, but of the vessel itself.¹⁰ Vicarious liability also applied in these cases, so the offense of a solitary sailor could result in the forfeiture of the entire ship, even if the sailor were acting against the owner's wishes.¹¹

The first U.S. Congress enacted customs laws patterned after the Navigation Acts, prescribing penalties including the forfeiture of both cargo and ship. The Supreme Court upheld these procedures in 1827, deciding that a ship could be forfeited even without a criminal conviction.¹² The Court reasoned that this was an *in rem* proceeding: "The thing is here primarily considered as the offender."¹³ In *United States v. Brig Malek Adhel* not too many years later, the Court upheld a forfeiture notwithstanding the owner's innocence, justifying it on tort-inspired grounds: that the forfeiture was the "only adequate means of suppressing the offense or wrong, or insuring an indemnity to the injured party."¹⁴

C. Forfeiture of Estate (Common Law)

Forfeiture of estate, unlike deodands and statutory forfeiture under the Navigation Acts and their progeny, focused on the offender rather than on the property itself. At common law, anyone convicted of a felony forfeited all his lands and personal property. Such forfeitures were rare in America. The Constitution prohibited such extreme penalties in treason cases, and Congress soon restricted their application to other crimes.¹⁵

III. Modern Forfeitures

Notwithstanding antecedents in the common law, all modern-day forfeitures, both civil and criminal, proceed under statutory authorizations. The patchwork of applicable statutes establishes varying standards and procedures for different types of forfeitures. It may be helpful to analyze them under several broad categories.

A. Types of Forfeitable Property

In the dissent in *Bennis v. Michigan*,¹⁶ Justice Stevens classifies forfeitable property into three categories: (1) "pure contraband," (2) "tools of the criminal's trade," and (3) "proceeds of criminal activity." This categoriza-

10. Doyle, *Crime and Forfeiture*, CRS Report for Congress, CRS-3 (rev. 1993).

11. Note, *Bane of American Forfeiture Law—Banished at Last?*, 62 Cornell L. Rev. 768, 774 (1977).

12. *The Palmyra*, 25 U.S. (12 Wheat.) 1 (1827) (involving charges of, but no conviction for, piracy).

13. *Id.* at 14.

14. *United States v. Brig Malek Adhel*, 43 U.S. (2 How.) 210, 233 (1844); *but see* Reed & Gill at 66 & n. 81 (suggesting that the procedures were employed and upheld, at least in part, based on the importance of the revenues generated by such forfeitures, and observing that 70–80% of federal revenue was generated through customs duties and seizures).

15. Doyle, *Crime and Forfeiture*, CRS Report for Congress, CRS-3 (rev. 1993).

16. 516 U.S. 442, 116 S. Ct. 994, 1004, 134 L.Ed.2d 68 (1996).

tion is helpful in understanding the origins and rationales of modern forfeiture procedure. Each will be considered in turn.

1. Contraband

The simplest forfeitures, both conceptually and practically, are forfeitures of contraband, that is, property the mere possession of which is illegal. Justification for this type of forfeiture is self-evident: because the law prohibits the individual from possessing the property in the first place, forfeiture is an essential element of the remedy. This is particularly true when the contraband is a threat to public health or morals—*e.g.*, obscene material, sawed-off shotguns, adulterated food, or illegal drugs. Seizure of these materials serves the important function of removing them from public circulation where they may do damage. Because there can be no legitimate claim to such property, procedural rights of “owners” in confiscation proceedings are not a significant concern. Contraband seizures typically do not result in significant revenues for the government.

2. Instrumentalities/Tools of Crime

Property used in the commission of a crime may also be subject to forfeiture. Vehicles are often confiscated under these provisions, as well as real property used for the manufacture or cultivation of illegal narcotics. This type of forfeiture has been justified on two separate grounds: (1) it provides greater deterrence for the wrongdoer by prescribing an additional penalty for the crime, and (2) it provides an incentive to the property owner to take precautions that prevent others from using his property for criminal activity.

3. Proceeds of Crime

Congress has also authorized the forfeiture of property generated by illegal activity, in some circumstances.¹⁷ More recently, it has authorized—in the case of criminal forfeiture at least—the forfeiture of substitute assets when the actual proceeds normally subject to confiscation are no longer available.¹⁸ These forfeitures are justified on the principle of avoiding unjust enrichment; the wrongdoer should not be permitted to profit from his crime. This type of forfeiture, first witnessed in RICO, has been aimed primarily at those activities likely to generate a large payoff for the perpetrators.

B. Offenses that Subject Property to Forfeiture

Although forfeitures may be pursued either as part of a criminal prosecution or as a separate civil proceeding, the forfeiture itself is always triggered by criminal activity. The range of activities that could prompt a forfeiture is considerable,¹⁹ and various legislative initiatives seek to broaden it further.²⁰

Notwithstanding the variety of statutes that carry forfeiture provisions, the overwhelming majority of the forfeitures carried out by the U.S.

17. *E.g.*, 18 U.S.C. § 981(a)(1)(B)-(F).

18. 21 U.S.C. § 853(p) (as amended in 1986).

19. See Appendix A, listing nearly 200 of the more commonly used forfeiture provisions.

20. See *supra* note 4.

Department of Justice are executed under one of two statutes.²¹ Section 981 of Title 18 prescribes civil forfeiture as a remedy for violation of a wide range of criminal statutes, including counterfeiting, smuggling, money laundering, and crimes against financial institutions.²² Moreover, 21 U.S.C. § 881 allows civil forfeiture of almost everything associated with the manufacture, sale, and distribution of controlled substances, including firearms used in conjunction with such activities.²³ Criminal forfeitures, representing

21. 18 U.S.C. § 981; 21 U.S.C. § 881. Both statutes are discussed in some detail *infra*.

22. Section 981(a)(1)(A) calls for the forfeiture of any property involved in financial transactions which violate the laws governing (1) the reporting of such transactions, 31 U.S.C. § 5313(a),

(2) structuring transactions to evade reporting requirements, 31 U.S.C. § 5324(a), (3) money laundering, 18 U.S.C. § 1956, and (4) engaging in monetary transactions with criminally derived property, 18 U.S.C. § 1957. Section 981(a)(1)(B) renders forfeitable the proceeds of any offense against a foreign nation involving manufacture, sale or distribution of controlled substances. Section 981(a)(1)(C) provides for the civil forfeiture of proceeds traceable to a violation of 18 U.S.C. §§ 215 (loan kickbacks), 471-74, 476-81, 485-88, 501, or 502 (counterfeiting securities, currency, and postal stamps), 510 (forging signatures on U.S. checks, securities or bonds), 542 (false statements in customs), 545 (smuggling), 656 or 657 (bank embezzlement), 842 or 844 (trafficking in explosives), 1005, 1006 or 1007 (falsifying bank records), 1014 (false statement in loan applications), 1028 (false identification of documents), 1029 (trafficking in access devices), 1030 (computer hacking), 1032 (asset concealment), 1341 or 1343 (mail and wire fraud, forfeiture limited to fraud against financial institutions), or 1344 (bank fraud). Section 981(a)(1)(D) governs forfeiture of property traceable to the gross receipts obtained, even indirectly, from violations of 18 U.S.C. §§ 666(a)(1) (federal program fraud), 1001 (false statements), 1031 (major fraud against the U.S.), 1032 (asset concealment), 1341 and 1343 (mail and wire fraud) when arising out of the sale of assets by a federal conservator or receiver (e.g., FDIC). Finally, section 981(a)(1)(F) calls for forfeiture of property traceable to the gross receipts obtained, even indirectly, from violations of 18 U.S.C. §§ 511 (altering or removing motor vehicle ID numbers), 553 (import/export of motor vehicles), 2119 (car-jacking), 2312 or 2323 (trafficking in stolen motor vehicles).

23. (a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or listed chemical in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9), except ... [against certain innocent owners].

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all money negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except ... [against certain innocent owners].

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except ... [against certain innocent owners].

(8) All controlled substances which have been possessed in violation of this subchapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, dispensed, acquired, or intended to be distributed, dispensed, acquired, imported, or exported, in violation of this subchapter or subchapter II of this chapter.

a smaller proportion of the overall forfeiture picture, and carried out only as part of a criminal prosecution, are authorized for essentially these same crimes.²⁴

In addition to these, however, separate statutory provisions provide for forfeitures in a remarkable array of contexts, including, among others, immigration (Title 8, forfeiting vessels, vehicles, aircraft, etc.), hazardous and deceptive products (Title 15, forfeiting the products themselves), fish and wildlife (Title 16, forfeiting guns, traps, fishing vessels, etc.), racketeering²⁵ (Title 18, forfeiting instrumentalities and proceeds), customs (Title 19, forfeiting contraband, as well as vessels, vehicles, aircraft, etc.), internal revenue (Title 26, forfeiting alcohol, tobacco and firearms), trading with the enemy (Title 50, forfeiting goods offered for trade).²⁶ Many of these provide for both civil and criminal forfeiture.

IV. Procedure—Criminal v. Civil

Today, forfeitures may be classified into two categories: (1) criminal (in personam) forfeitures, and (2) civil (in rem) forfeitures. The former function explicitly as a punishment for the offender following a criminal conviction. The latter proceed against the "offending" property itself; the innocence of the owner is not necessarily a defense. The procedures employed in each type of forfeiture warrant separate consideration.

A. Criminal Forfeiture Procedure

(10) Any drug paraphernalia (as defined in section 857 of this title).

(11) Any firearm (as defined in section 921 of Title 18) used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property.

21 U.S.C. § 881(a).

24. 18 U.S.C. § 982 (a list of offenses closely tracking the list of crimes prompting civil forfeiture under Section 981 listed in the previous footnote, with some additions to include immigration offenses; see the summary of section 982 in Appendix A); 21 U.S.C. § 881.

25. The RICO statute reads, at 18 U.S.C. § 1963(a):

Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years . . . , or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) and—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to the section, that the person forfeit to the United States all property described in the subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

26. See Appendix A, listing more commonly used forfeiture provisions.

The essential condition precedent for a criminal forfeiture is a criminal conviction. Typically, the criminal conviction and the criminal forfeiture are pursued simultaneously in a single proceeding: the criminal trial.

1. Jurisdiction

Seizure of the property is not necessary in order to assert jurisdiction for a criminal forfeiture, since the jurisdiction is over the person rather than over the property. However, in some cases the court may restrain the use or transfer of the property pending the outcome of the trial.²⁷

2. Statutes and Rules Governing Criminal Forfeitures

The procedures for criminal forfeiture, at least for most of the Title 18 crimes that allow for forfeiture, are dictated by statute.²⁸ The statute details, among other things, the methods and standards for issuing a seizure warrant,²⁹ how the warrant is executed,³⁰ how the property is disposed of,³¹ and the Attorney General's discretion to grant mitigation or remission.³²

After returning a conviction, the jury (or trier-of-fact) must determine, by special verdict, which of the property described in the indictment is actually subject to forfeiture, as provided in Criminal Rule 31(e).³³ Following the special verdict (or guilty plea), Criminal Rule 32(d)(2) provides that the court may enter a preliminary order of forfeiture and allow discovery to identify and locate the property,³⁴ and conduct any hearings on third party claims,³⁵ before entering the final order of forfeiture.³⁶ The rules also allow

27. 21 U.S.C. § 853(e)(1)-(2); *see also* 18 U.S.C. § 1963(d)(1)-(2) (RICO).

28. 21 U.S.C. § 853 (controlled substances); 18 U.S.C. § 982(a)(6)(B) & (b)(1) (explicitly invoking the procedures of 21 U.S.C. § 853 for other forfeitures under Title 18); 18 U.S.C. § 1963 (RICO).

29. 21 U.S.C. § 853(f).

30. 21 U.S.C. § 853(g).

31. 21 U.S.C. § 853(h); *see also* 18 U.S.C. § 1963(f) (RICO).

32. 21 U.S.C. § 853(i); *see also* 18 U.S.C. § 1963(g) (RICO).

33. "If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any." Criminal Rule 31(e).

34. 21 U.S.C. § 853(m); *see also* 18 U.S.C. § 1963(k) (RICO).

35. 21 U.S.C. § 853(n); *see also* 18 U.S.C. § 1963(l) (RICO); *see also* discussion of third party claims *infra*.

36. If a verdict contains a finding that property is subject to a criminal forfeiture, or if a defendant enters a guilty plea subjecting property to such forfeiture, the court may enter a preliminary order of forfeiture after providing notice to the defendant and a reasonable opportunity to be heard on the timing and form of the order. The order of forfeiture shall authorize the Attorney General to seize the property subject to forfeiture, to conduct any discovery that the court considers proper to help identify, locate, or dispose of the property, and to begin proceedings consistent with any statutory requirements pertaining to ancillary hearings and the rights of third parties. At sentencing, a final order of forfeiture shall be made part of the sentence and included in the judgment. The court may include in the final order such conditions as may be reasonably necessary to preserve the value of the property pending any appeal.

Criminal Rule 32(d)(2).

the court to include in its order any conditions necessary to protect the value of the property pending appeal.³⁷

3. Procedural Due Process

In criminal cases, the procedural rights of the defendant/owner—notice, counsel, speedy trial, etc.—are protected in the context of the trial itself. Rights to notice of the forfeiture are formalized in Criminal Rule 7(c)(2),³⁸ which requires in the case of a criminal forfeiture that the indictment itself identify the property to be forfeited. In the course of the trial, the defendant has the right to present the case and evidence not only against his or her conviction, but also against the forfeiture of his or her property.

4. Burden of Proof (Criminal)

The criminal conviction, of course, must be found beyond a reasonable doubt; otherwise, there can be no criminal forfeiture. The special verdict, the finding that property is subject to confiscation, however, is made under a subtle burden-shifting scheme established by the statute.³⁹ If the government shows, by a preponderance of the evidence, that a convicted felon acquired the property at or soon after the time of the felony, and there was no likely source for such property other than the violation, the prosecution enjoys a "rebuttable presumption" of forfeitability.⁴⁰ Once the presumption is established, the burden is on the claimant to prove, again by a preponderance, that the property is *not* subject to forfeiture.

5. Third Party Claims

Because the legal action in criminal forfeitures focuses on the defendant rather than the property, it is clear that only the *defendant's* interest in the property is forfeitable. Legitimate third party interests should not be extinguished in these proceedings. To protect these interests, the statutes under which most criminal forfeitures are sought require published notice, after entry of an order of forfeiture, of the government's intent to dispose of the property.⁴¹ Third parties with claims to the property have 30 days in which to petition the court for a hearing.⁴²

37. *Id.*

38. "No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information shall allege the extent of the interest or property subject to forfeiture." Criminal Rule 7(c)(2)

39. 21 U.S.C. § 853(d).

40. *Id.*; cf. discussion of civil forfeitures, Section IV.B.5, *infra*, (civil forfeitures can be effected based on a showing of mere probable cause).

41. 18 U.S.C. § 1963(l)(1); 21 U.S.C. § 853(n)(1). The government is also permitted—but not required—to serve notice directly on parties known to have some claim to the property: Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

Id.

42. 18 U.S.C. § 1963(l)(2); 21 U.S.C. § 853(n)(2);

Once a petition is filed, the hearing must be held within 30 days.⁴³ The hearing is conducted before the judge alone, without a jury.⁴⁴ The third-party claimant and the government can introduce evidence and cross-examine witnesses at the hearing, and the court also considers any relevant portions of the record of the underlying criminal case.⁴⁵

The petitioner bears the burden of proof, by a preponderance of the evidence, (1) that his or her right or title to the property is vested and/or superior to the defendant's, or (2) that he or she was a bona fide purchaser, who acquired the property for value, reasonably without cause to believe the property was subject to forfeiture.⁴⁶ Based on such a showing, the statute permits the court to amend its order of forfeiture, and the rule contemplates that any such amendment will be made in a final forfeiture order issued at sentencing.⁴⁷

These procedures are detailed in Title 18 and apply primarily to a defined set of Title 18 offenses. There are many other statutes that provide for forfeiture as a criminal penalty or as a remedy available "upon conviction" of a crime, which include no third-party claim adjudication procedure.⁴⁸ These presumably can be carried out as directed by the court. The

Any person, other than the defendant, asserting a legal interest in the property ... may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

43. 18 U.S.C. § 1963(f)(4); 21 U.S.C. § 853(n)(4):

The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

44. 18 U.S.C. § 1963(f)(2); 21 U.S.C. § 853(n)(2).

45. 18 U.S.C. § 1963(f)(5); 21 U.S.C. § 853(n)(5):

At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

46. 18 U.S.C. § 1963(f)(6); 21 U.S.C. § 853(n)(6):

If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

See also 18 U.S.C. § 1963(c) and 21 U.S.C. § 853(c) for the bona fide purchaser exception.

47. 18 U.S.C. § 1963(f)(6); 21 U.S.C. § 853(n)(6); Criminal Rule 32(d)(2).

48. Many of the statutes governing endangered species and fish and wildlife resources, for example, provide for forfeiture of guns, traps, nets, vehicles, and vessels, *upon conviction*. E.g., 16 U.S.C. §§ 26, 670j(c), 707, *inter alia*. See Appendix A for further listings.

statutory procedures for the Title 18 cases detailed above, however, may provide a useful guide for a court seeking to fashion appropriate procedures when the statute specifies none. At the very least, the court can be assured that these procedures have passed constitutional muster.

B. Civil Forfeiture Procedure

Unlike criminal forfeitures, civil forfeitures proceed *in rem*: "The property is the defendant in the case and burden of proof rests on the party alleging ownership."⁴⁹ This fundamental difference has very significant implications, for jurisdiction, for notice, for burdens of proof, and for third party rights.

1. Jurisdiction

Because the proceeding is *in rem*, the court must seize the property before it can exercise jurisdiction. Jurisdiction was traditionally available only in the district where the res was located. However, in 1992, Congress expanded jurisdiction in forfeiture actions to include the district "in which any of the acts or omissions giving rise to the forfeiture occurred."⁵⁰ The statute recognizes several permissible venues, including (1) the district in which the forfeiture "accrues," (2) the district where the property is found, as well as (3) any district into which the property is brought.⁵¹

The Rules Committees recently recognized Congress' expansion of jurisdiction and approved an amendment to Supplemental Rule E(3)(a) authorizing service outside the district.⁵² This makes the rule consistent with the corresponding statutory provision at 28 U.S.C. § 1355(d).

2. Administrative Forfeiture

In customs cases, and those cases that use customs procedures—*i.e.* most forfeiture cases⁵³—uncontested forfeitures can often be handled administratively, without involving the court. The procedure requires that notice be given to anyone with an interest in the property, who is then given an opportunity to contest the forfeiture in court proceedings.⁵⁴

To contest the administrative forfeiture, the claimant must respond within strict time deadlines, posting a bond equal to 10% of the value of the property or requesting a waiver based on indigence. As a practical matter, the waivers are easy to obtain. Once a claim is filed, the matter loses its "administrative" character and becomes a court proceeding.

3. Statutes and Rules—Customs and Admiralty Procedures Apply

49. *United States (Drug Enforcement Administration) v. One Jeep Wrangler*, 972 F.2d 472, 476 (2d Cir. 1992).

50. 28 U.S.C. § 1355(b)(1)(A).

51. 28 U.S.C. § 1395.

52. Minutes (January 1998), Standing Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

53. See section IV.B.3, *infra*.

54. 19 U.S.C. §§ 1607–08. Similar provisions for administrative forfeiture exist under the revenue laws as well. 26 U.S.C. § 7325.

As noted above, the overwhelming majority of civil forfeitures are carried out under one of two statutes: 18 U.S.C. § 981 and 21 U.S.C. § 881. Both statutes specifically invoke, for process purposes, the "Supplemental Rules for Certain Admiralty and Maritime Claims" appended to the Federal Rules of Civil Procedure.⁵⁵ Moreover, a separate catch-all statute makes admiralty procedure applicable by default in all forfeiture actions, absent a Congressional provision to the contrary:

Unless otherwise provided by Act of Congress, whenever a forfeiture of property is prescribed as a penalty for violation of an Act of Congress and the seizure takes place on the high seas or in navigable waters within the admiralty and maritime jurisdiction of the United States, such forfeiture may be enforced by libel in admiralty *but in cases of seizures on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty.*⁵⁶

Beyond the specific invocation of admiralty rules, these two laws governing forfeitures specifically incorporate customs procedure at 18 U.S.C. § 981(d)⁵⁷ and at 21 U.S.C. § 881(d)⁵⁸ respectively. Therefore, courts and practitioners find themselves referring to 19 U.S.C. § 1602 *et seq.*, the customs statutes, for law and procedure in a wide variety of cases.⁵⁹

55. 18 U.S.C. § 981(b)(2); 21 U.S.C. § 881(b).

56. 28 U.S.C. § 2461(b) (emphasis added).

57. For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. § 1602 *et seq.*), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

18 U.S.C. § 981(d).

58. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof. . . .

21 U.S.C. § 881(d).

59. The relevant sections of the customs laws—explained in more detail in Appendix A—are summarized here by title:

1602 Seizure; report to customs officer

1603 Seizure; warrants and reports

1604 Seizure; prosecution

1605 Seizure; custody; storage

1606 Seizure; appraisement

1607 Seizure; value \$500,000 or less, prohibited articles, transporting conveyances

1608 Seizure; claims; judicial condemnation

1609 Seizure; summary forfeiture and sale

1610 Seizure; judicial forfeiture proceedings

The internal revenue code also details some forfeiture procedures, primarily directed at alcohol, tobacco, and firearms violations.⁶⁰ Even these, however, directly reference the customs laws for remission and mitigation procedures.⁶¹

4. Procedural Due Process—Notice

Notice, particularly to potential third party claimants, is a sensitive issue in civil forfeitures. The matter never reaches court unless someone files a timely claim and a bond. Absent such filing, the forfeiture is perfected administratively, without any judicial proceeding at all. Less than adequate notice will result in extinguishing even the most meritorious of claims against the forfeiture.

The stringent notice requirements probably have their origins, once again, in ancient admiralty law. In an early U.S. Supreme Court case known simply as *The Mary*, Chief Justice John Marshall held that the only notice required in an *in rem* admiralty case was service upon the res.⁶² By today's standards, particularly as applied to property other than a ship, such notice appears inadequate.

Notwithstanding the Court's holding in *The Mary*, Supplemental Rule C(4)⁶³ accordingly requires notice not only by service on the property itself, but also by publication in a newspaper of general circulation in the district. The specifics of such notice by publication are usually the subject of local rule, often requiring publication in a local newspaper for three successive weeks, the same notice requirement that applies to administrative forfeitures.⁶⁴

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- 1611 Seizure; sale unlawful
 - 1612 Seizure; summary sale
 - 1613 Disposition of proceeds of forfeited property
 - 1614 Release of seized property
 - 1615 Burden of proof in forfeiture proceedings
 - 1616a Disposition of forfeited property
 - 1618 Remission or mitigation of penalties
 - 1619 Award of compensation to informers

60. 26 U.S.C. § 7321-27. The sections of Title 18 that deal with liquor trafficking and cigarette trafficking incorporate these forfeiture procedures from the internal revenue laws, rather than the procedures detailed elsewhere in Title 18. *E.g.*, 18 U.S.C. §§ 2344(c) & 3667.

61. 26 U.S.C. § 7327.

62. *The Mary*, 13 U.S. (9 Cranch) 126 (1815).

63. **Notice.** No notice other than the execution of the process is required when the property that is the subject of the action has been released in accordance with Rule E(5). If the property is not released within 10 days after execution of process, the plaintiff shall promptly or within such time as may be allowed by the court cause public notice of the action and arrest to be given in a newspaper of general circulation in the district, designated by order of the court. Such notice shall specify the time within which the answer is required to be filed as provided by subdivision (6) of this rule. This rule does not affect the requirements of notice in actions to foreclose a preferred ship mortgage pursuant to the Act of June 6, 1920, ch. 250, § 30 as amended.

Rule C(4), Supplemental Rules for Certain Admiralty and Maritime Claims.

64. *See also* 19 U.S.C. § 1607(a) (notice of customs seizures must be published for three consecutive weeks); 26 U.S.C. § 7325(2) (notice of internal revenue seizures must be published for three consecutive weeks).

Until recently, Supplemental Rule C(6)⁶⁵ allowed claimants only 10 days "after process has been executed" in which to file a claim, and 20 days more to file an "answer." This conflicted with customs forfeiture law at 19 U.S.C. § 1608, which allows 20 days after first publication to file a claim. In January 1998, the Standing Committee approved amendments to Supplemental Rule C(6) expanding response time for non-admiralty forfeitures,⁶⁶ bringing the rule into line with the statute. In so doing, the Committee, for the first time, drew a formal distinction between traditional admiralty proceedings, which remain subject to the 10-day limit, and the much more common non-admiralty forfeitures, for which the greater time was allowed.

Even as amended, however, the time to respond is short. Because the property rights of innocent third parties are at stake, the adequacy of notice and time to respond deserve particular attention. Ancient admiralty principles—e.g., that execution of process on the ship is sufficient notice to anyone with an interest in it—are clearly inadequate as applied to modern civil forfeiture practice.

5. Burden of Proof (Civil)

In the court proceedings for a civil forfeiture, the government need only establish *probable cause* to believe that the property is subject to forfeiture. The government need not prove even that a crime was committed; probable cause will suffice for civil forfeiture purposes. Once the government has met this burden, the burden shifts to the claimant to prove *by a preponderance of the evidence* that his or her interest in the property is not subject to a declaration of forfeiture.⁶⁷ He or she may do so by establishing either (1) that the predicate offense was never committed, or (2) that the property lacks a sufficient nexus to the crime to qualify for forfeiture under the statute.

6. Defenses

a. Innocent Owner

Except when the relevant statute provides otherwise, the innocence of the owner is not typically a defense to civil forfeiture.⁶⁸ The Supreme Court

65. **Claim and Answer; Interrogatories.** The claimant of property that is the subject of an action in rem shall file a claim within 10 days after process has been executed, or within such additional time as may be allowed by the court, and shall serve an answer within 20 days after the filing of the claim. The claim shall be verified on oath or solemn affirmation, and shall state the interest in the property by virtue of which the claimant demands its restitution and the right to defend the action. If the claim is made on behalf of the person entitled to possession by an agent, bailee, or attorney, it shall state that the agent, bailee, or attorney is duly authorized to make the claim. At the time of answering, the claimant shall also serve answers to any interrogatories served with the complaint. In actions in rem, interrogatories may be so served without leave of court.

Rule C(6), Supplemental Rules for Certain Admiralty and Maritime Claims.

66. Minutes (January 1998), Standing Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

67. 19 U.S.C. § 1615.

68. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974) ("[T]he innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense."); *United States (Drug Enforcement Administration) v. One Jeep Wrangler*, 972 F.2d 472, 476 (2d Cir. 1992) ("The innocence of the owner is irrelevant—it is enough that the property was involved in a violation to which forfeiture attaches.").

recently reaffirmed the absence of constitutional protections for innocent owners in *Bennis v. Michigan*.⁶⁹ In that case, an innocent owner of an automobile—used by her husband for a liaison with a prostitute—challenged the forfeiture of her interest in the car not only as an unconstitutional taking but also as a due process violation. She relied on the Court's comment in *Calero-Toledo* that "it would be difficult to reject the constitutional claim of . . . an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property."⁷⁰ But that statement was dismissed in *Bennis* as mere dictum.⁷¹ The Court concluded with a ringing endorsement of civil forfeiture, even from innocent owners, as "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced."⁷²

The *Bennis* case, of course, arose out of a state forfeiture law, but nonetheless clarified the constitutional limits, or lack thereof, on civil forfeiture. Although the constitution may not protect an innocent owner, some of the federal forfeiture statutes do, barring confiscation absent the owner's knowledge or consent to the illegal use of his property.⁷³ These statutory exceptions have not always been interpreted generously to "innocent" claimants. The "lack of consent" defense has been interpreted to require proof that the owner has done all that reasonably could be expected to prevent the proscribed use; the "lack of knowledge" defense may, in some circuits, be unavailable if the owner *should have known* of the illegal use of the property.⁷⁴

b. Double Jeopardy

The Supreme Court has now rejected the conclusion, previously reached by at least two circuits, that civil forfeitures under 18 U.S.C. § 981 and 21 U.S.C. § 881 could constitute punishment for double jeopardy purposes.⁷⁵ Therefore, double jeopardy is not presently a bar to civil forfeiture after a criminal sentence has been imposed, or to criminal prosecution after a civil forfeiture has been ordered.

69. 516 U.S. 442, 116 S.Ct. 994, 134 L.Ed.2d 68 (1996).

70. 416 U.S. at 689, 94 S.Ct. 2080.

71. 116 S. Ct. at 999.

72. *Id.* at 1001 (quoting *J.W. Goldsmith Jr.-Grant Co. v. United States*, 254 U.S. 505, 511, 41 S.Ct. 189, 65 L.Ed. 376 (1921)).

73. *E.g.*, 18 U.S.C. § 981(a)(2) (in money laundering cases, "[n]o property shall be forfeited . . . to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without [his or her] knowledge"); 21 U.S.C. § 881(a)(4) (in controlled substance cases, vehicles and vessels are not forfeitable if operated by an innocent common carrier, or if the actions prompting forfeiture were without "the knowledge, consent or willful blindness of the owner"); 21 U.S.C. § 881(a)(7) (in controlled substance cases, "no [real] property shall be forfeited . . . to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without [his or her] knowledge or consent").

74. *E.g.*, *United States v. 755 Forest Road*, 985 F.2d 70 (2d Cir. 1993) (defense is unavailable to the willfully blind); *but see United States v. 6960 Miraflores Ave.*, 995 F.2d 1558 (11th Cir. 1993) (defense is available if the claimant can prove absence of "actual knowledge").

75. *United States v. Ursery*, 116 S.Ct. 2135 (1996), reversing *United States v. Ursery*, 59 F.3d 568 (6th Cir. 1995) and *United States v. \$405,089.23*, 33 F.3d 1210 (9th Cir. 1994).

c. Excessive Fines

The Supreme Court has held that a forfeiture, even a civil forfeiture, may be so great as to violate the Eighth Amendment's excessive fines clause.⁷⁶ The Court just this term has attempted to clarify the application of the Eighth Amendment to forfeitures in *United States v. Bajakajian*.⁷⁷ In that case, the Court concluded that where the forfeiture is punitive in function and purpose—even if styled as an in rem civil forfeiture—it is a “fine,” and when it is “grossly disproportional to the gravity of the . . . offense,” it is unconstitutionally excessive.⁷⁸

7. Return of the Property

If the claimant succeeds in proving by a preponderance of the evidence that the forfeiture was improper, the government must return the property.⁷⁹ The government is not required to make compensation for depreciation or damage to the property sustained while in government custody, however.⁸⁰ If the forfeiture stands, the property is disposed of as dictated by the applicable statute.

V. Conclusions and Recommendations

The long and peculiar history of forfeitures in English and American law has yielded procedural constructs that are less than intuitive. It may defy common sense to consult customs laws or admiralty rules for guidance when confiscating illegal drugs from an urban crack house. An understanding of the history and evolution of forfeiture principles and practices, therefore, is critical for any consideration of procedural reform.

Civil forfeiture procedures are pretty well established in the customs laws and the admiralty rules. These procedures are not necessarily well-suited to the typical civil forfeiture case, however. The recent amendments to the admiralty rules governing notice of civil forfeitures, accordingly, were premised, at least in part, on the recognition that traditional rules of admiralty do not always accommodate the legitimate interests of the parties in modern forfeiture actions. Because the statutes specifically invoke customs procedures and admiralty rules, however, the Rules Committees are, at least for now, required to consider forfeiture procedure issues in the context of the Supplemental Rules for Certain Admiralty and Maritime Claims. Preserving procedures that make sense for admiralty cases may require development of two “tracks” for cases under the admiralty rules: (1) one for traditional admiralty cases, and (2) one for non-admiralty forfeitures. The Standing Committee on Rules of Practice and Procedure is

76. *Alexander v. United States*, 113 S.Ct. 2766 (1993); *Austin v. United States*, 113 S. Ct. 2801 (1993).

77. *United States v. Bajakajian*, 118 S.Ct. 2028 (1998).

78. *Id.* at 2037–38. The nuances of this 5–4 decision, and its forceful dissent, are beyond the scope of this article. It is sufficient for these purposes to note that even a civil forfeiture may raise Eighth Amendment concerns.

79. 28 U.S.C. § 2465.

80. *United States v. Lewis*, 987 F.2d 1349, 1357 (8th Cir. 1993).

already heading in this direction with its latest amendments. It appears to be a promising approach.

Criminal forfeiture proceedings, in contrast, do not always have well-defined procedures prescribed. The statute governing most cases under Title 18 prescribes some detailed procedures, but the criminal rules do little to clarify them. Moreover, criminal forfeitures under many of the other statutes have neither statutory nor rule-based procedures prescribed for them. The Rules Committees should consider establishing some rules, perhaps reflecting the procedures set by Congress for Title 18 and Title 26 cases, that would apply generally to criminal forfeitures wherever they may arise. Once a set of such rules is in place, Congress may be willing to defer to the rule-based procedures, and will not feel the need to impose procedures statutorily as it has for most of the Title 18 criminal forfeitures.

It may well be time for a legislative overhaul of forfeiture procedure, given the somewhat tortured procedural landscape modern forfeitures currently face. In the meantime, the Rules Committees should devote attention to admiralty rules to assure that they function appropriately for non-admiralty forfeitures while still addressing the legitimate concerns of admiralty cases. At the same time, the criminal rules should be amended to set forth detailed criminal forfeiture procedures—consistent with current statutory ones—to fill a procedural void for those cases that are outside the scope of the statutory procedures.

Appendix A

Commonly used forfeiture-related statutes

Title 7

Agricultural Products

- 608a(5) Exceeding quota. Persons exceeding agricultural quota or allotment (or those aiding) "shall forfeit" the market value of such excess; recoverable in a "civil suit brought in the name of the U.S."
- 608e-1(a) Imports violating marketing order. Importation of certain products is prohibited when Secretary has issued a marketing order regulating the grade, size, quality of the products. Property is forfeitable to the extent permitted by section 608a(5).
- 2024(g) Illegal food stamp operation. Property involved in the operation (money or securities exchanged for coupons) is subject to forfeiture; procedures to be determined by USDA regulations.
- 2156(f) Animal fighting venture. Animals involved are "liable to be proceeded against and forfeited at any time . . . on complaint filed in any U.S. District Court." Animal to be disposed of humanely.

Title 8

Immigration

- 1324(b) Transporting aliens. Conveyance (vessel, vehicle, aircraft, etc.) used for bringing in or harboring aliens can be seized without warrant if there is probable cause. Customs procedures apply "insofar as not inconsistent with provisions herein." Once probable cause is shown, the claimant to the property has the burden of proof.

Appendix A—Continued

Title 15 Trade and Commerce

- 6 Conspiracy in restraint of trade. Property owned by an illegal combination or pursuant to a conspiracy may be forfeited under the customs procedures.
- 77 Unfair competition. The president may detain foreign vessels in time of war if the other country discriminates against Americans in trade. Any detained vessel that attempts to depart shall be forfeited to the U.S. The president may deploy military to effect forfeiture.
- 1195 Flammable fabrics. Fabrics are forfeitable by libel process conforming as nearly as possible to "proceedings in rem in admiralty", except that on demand of any party and in the discretion of court, issues of fact shall be tried by jury. Disposal by destruction, return to claimant (on payment of all costs) or sale, the latter two conditioned on posting of bond to assure that the fabric will be treated to make it lawful.
- 1265 Misbranded hazardous substance or banned substance. Substance is forfeitable under provisions tracking the language of Section 1195.
- 2071(b) Consumer product which fails an applicable safety rule. Product is forfeitable under provisions tracking the language of Section 1195, except there is no right to a jury trial.
- 2104 Hobby protection (coins, political items, etc.). Counterfeits and unlabeled imitations, when imported, are subject to seizure and forfeiture under the customs laws.

Title 16 Endangered Species and Wildlife Resources

- 26 Yellowstone. Guns, traps, horses, etc. used to hunt illegally may be seized and, upon conviction of persons using them, shall be forfeited. Seized property is disposed of by authority of the Secretary of Interior.
- 470gg(b) Unauthorized excavation/trafficking in archeological resources from public/Indian lands. Vehicle and equipment used in connection with violation may be subject to forfeiture upon (1) conviction of the person violating the law; (2) assessment of civil penalty against such person; or (3) determination by court that resources or equipment were used in the violation. When violation involves Indian lands, forfeited property is returned to the Indian or the Indian tribe affected.
- 668b(b) & (c) Bald/golden eagle. Guns and vehicles, etc. used to take/sell a bird, part, nest or egg is subject to forfeiture. Customs laws apply "insofar as applicable and not inconsistent with this chapter," except that duties of customs officers shall be carried out by Interior Department personnel.
- 668dd(f) National Wildlife Refuge System. Property, fish, birds, etc. unlawfully taken shall be seized, and upon conviction of the person, shall be forfeited. Forfeited property shall be disposed of by the Secretary in accordance with law.
- 670j(c) Public lands subject to conservation and rehabilitation programs. Guns, traps, etc. used in unauthorized hunting and fishing on such lands may be seized. Upon conviction, forfeiture may be adjudicated as a penalty. Customs laws apply, but shall be carried out by Interior or Agriculture Department personnel.

Appendix A—Continued

- 690(e) Bear River Refuge. Birds, animals, and natural growths removed from the refuge shall be summarily seized. Upon conviction or judgment by U.S. Court that they were killed or captured contrary to law, they shall be forfeited. Seized property is disposed of by authority of the Secretary of Interior in accordance with law.
- 706 Migratory birds. Birds, parts, nests, and eggs taken are seized and forfeited according to language tracking that of Section 690(e).
- 707 Migratory birds. Guns, traps, nets, vehicles, and vessels used to violate Section 706 may be seized and, upon conviction, shall be forfeited as a penalty. Seized property is disposed of by authority of the Secretary of Interior.
- 742j-1 Airborne hunting. Birds, fish, and animals shot or captured, and guns, aircraft and other equipment used are subject to forfeiture. Customs laws apply, but shall be carried out by Interior Department personnel.
- 773h North Pacific halibut. Fishing vessel, gear, and fish shall be forfeited pursuant to a civil proceeding under this section. Attorney General may seize property "upon judgment." Customs laws apply unless "inconsistent with the provisions, policies, or purposes of this subchapter." Rebuttable presumption that fish on board were taken in violation of law.
- 916f Whaling. Court may order whales or monetary value thereof forfeited and disposed of at the direction of court.
- 1030 North Pacific fisheries. Fishing vessel, gear, and fish shall be forfeited pursuant to a civil proceeding under this section. Attorney General may seize property "upon judgment." Customs laws apply unless "inconsistent with the provisions, policies, or purposes of this subchapter." Rebuttable presumption that fish on board were taken in violation of law.
- 1171 North Pacific fur seals. Vessels and equipment, as well as seals, or the monetary value thereof, shall be forfeited. Customs laws apply to seizure, summary and judicial forfeiture, condemnation, sale, proceeds, remission or mitigation, insofar as "applicable and not inconsistent."
- 1376 Marine mammal protection. If a vessel is employed in taking marine mammals, its cargo, or the monetary value thereof, shall be forfeited. Customs law procedures for seizure, forfeiture, condemnation, disposition of forfeited property, proceeds of sale, remission or mitigation, apply insofar as "applicable and not inconsistent."
- 1540(e) Endangered species. Fish, wildlife, or plants taken, sold, or shipped shall be subject to forfeiture. Customs law procedures for seizure, forfeiture, condemnation, disposition of forfeited property, proceeds of sale, remission or mitigation, apply insofar as "applicable and not inconsistent."
- 1860 Fishery conservation. Vessel, equipment, cargo, as well as fish (or fair market value thereof) shall be subject to forfeiture in a civil proceeding. Customs law procedures for disposition, proceeds, remission or mitigation, and compromise of claims apply unless "inconsistent with the provisions, policies, or purposes of this subchapter." Posting a bond stays the seizure. Fish cannot be sold for less than

Appendix A—Continued

market value. Rebuttable presumption that fish on board were taken in violation of law.

2409 Antarctic conservation. Animal or plant, guns, traps, equipment, vessels, vehicles, and aircraft are subject to forfeiture. Customs law applies insofar as "applicable and not inconsistent."

2439 Antarctic Convention. Antarctic marine living resources, guns, traps, equipment, vessels, vehicles, and aircraft are subject to forfeiture. Customs law applies insofar as "applicable and not inconsistent."

3374 Illegally taken fish and wildlife. Fish, wildlife, and plants illegally trafficked in are subject to forfeiture notwithstanding any culpability requirements for civil penalty or criminal prosecution. Vehicles, vessels, etc. are subject to forfeiture if owner was consenting party or privy thereto or should have known. Customs law procedures for seizure, forfeiture, condemnation, disposition, proceeds, remission or mitigation apply insofar as they are "applicable and not inconsistent." Any warrant for search and seizure must be issued in accordance with Criminal Rule 41.

3606 North Atlantic salmon. Vessel, as well as fish (or their fair market value) are subject to civil forfeiture as under Section 1860.

Title 17 Copyright Protection

506(a) Infringing copies and equipment. Upon conviction for criminal copyright infringement, the court shall order forfeiture and destruction of infringing copies, as well as the equipment used to make them.

603 Importation prohibition. Infringing articles imported are subject to seizure and forfeiture in the same manner as property imported in violation of "customs revenue laws." Articles are destroyed as directed by the Secretary of the Treasury or the court, or may be returned to foreign country if the Secretary is persuaded that the importer had no reason to know it was a violation of law.

910 Semi-conductor chip products. Same standards as provided in Section 603.

Title 18 Criminal Code

492 Counterfeiting. Counterfeit coins, obligations and securities, as well as material and equipment for their manufacture "shall be forfeited." Interested persons can petition the Secretary of the Treasury (or the Attorney General if other crimes are involved) for remission or mitigation.

542 Entry of Goods by False Statements. Treated under section 981 (below).

544 Relanding of Goods. Any merchandise entered or withdrawn for exportation without the payment of export duties, that is then relanded in the U.S. without entry having been made, is considered to be illegally imported property and shall be forfeited.

545 Smuggling. Treated under section 981 (below).

Appendix A—Continued

- 548 Bonded Warehouse Goods. Fraudulently concealed, removed, or repacked merchandise in a bonded warehouse, as well as merchandise whose numbers and markings have been altered or defaced, "shall be forfeited."
- 550 False Claims for Refunds of Duties. Whoever files such a false claim for refund of duties on exported merchandise shall forfeit the merchandise or the value thereof.
- 844(c) Explosive Materials. Treated under section 981 (below).
- 924(d) Firearms. Firearms or ammunition used in any criminal violation shall be subject to seizure and forfeiture as provided in the Internal Revenue Code (26 U.S.C. § 5845(a)). Forfeiture proceedings must begin within 120 days of seizure. The property must be returned, however, upon acquittal of—or dismissal of charges against—the owner or possessor.
- 962-967 Neutrality Laws. Arming a vessel against a friendly nation, delivering an armed vessel to a belligerent nation, departure of a vessel detained in aid of neutrality by the president, etc., results in forfeiture of the vessel, equipment, and cargo. In the case of arming a vessel, half is forfeited to the U.S., the other half to the informer.
- 981 "White Collar" Transactions (Civil Forfeiture). Discussed at some length in the text of the paper to which this is appended, this section specifies forfeiture as a civil remedy for criminal wrongdoing and identifies procedures therefor. The criminal statutes for which the civil forfeiture is available are listed in footnote 22 of the text. They are summarized again here, all sections coming from Title 18 except where otherwise noted:
- 215 Loan kickbacks. Forfeiture of property derived from proceeds traceable to the crime.
- 471-74, 476-81, 485-88, & 501-02 Counterfeiting securities, currency, and postal stamps currency, and postal stamps. Forfeiture of property derived from proceeds traceable to the crime.
- 510 Forging signatures on U.S. checks, securities and bonds. Forfeiture of property derived from proceeds traceable to the crime.
- 511 Altering or removing motor vehicle ID numbers. Forfeiture of gross receipts traceable to the crime.
- 542 False statements made in customs. Forfeiture of property derived from proceeds traceable to the crime.
- 545 Smuggling. Forfeiture of property derived from proceeds traceable to the crime.
- 553 Importing or exporting stolen vehicles. Forfeiture of gross receipts traceable to the crime.
- 656-57 Bank embezzlement. Forfeiture of property derived from proceeds traceable to the crime.

Appendix A—Continued

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| 666(a)(1) | Federal program fraud. Forfeiture of gross receipts traceable to the crime if related to a sale by a federal receiver. |
| 842, 844 | Trafficking in explosives. Forfeiture of property derived from proceeds traceable to the crime. |
| 1001 | False statements. Forfeiture of gross receipts traceable to the crime if related to a sale by a federal receiver. |
| 1005-07 | Falsifying bank records. Forfeiture of property derived from proceeds traceable to the crime. |
| 1014 | False statement in loan applications. Forfeiture of property derived from proceeds traceable to the crime. |
| 1028 | False identification of documents. Forfeiture of property derived from proceeds traceable to the crime. |
| 1029 | Trafficking in access devices. Forfeiture of property derived from proceeds traceable to the crime. |
| 1030 | Computer hacking. Forfeiture of property derived from proceeds traceable to the crime. |
| 1031 | Major fraud against the U.S. Forfeiture of gross receipts traceable to the crime if related to a sale by a federal receiver. |
| 1032 | Asset concealment. Forfeiture of property derived from proceeds or gross receipts (related to a sale by a federal receiver) traceable to the crime. |
| 1341 & 1343 | Mail and wire fraud. Forfeiture of property derived from proceeds or gross receipts (related to a sale by a federal receiver) traceable to the crime. |
| 1344 | Bank fraud. Forfeiture of property derived from proceeds traceable to the crime. |
| 1956 | Money laundering. Forfeiture of property involved. |
| 1957 | Monetary transactions in criminally derived property. Forfeiture of property involved. |
| 2119 | Carjacking. Forfeiture of gross receipts traceable to the crime. |
| 2312-13 | Possessing, selling or transporting stolen vehicle. Forfeiture of gross receipts traceable to the crime. |

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- 31 U.S.C. § 5313(a) Reporting certain financial transactions. Forfeiture of property involved in transactions that are not reported as required.
- 31 U.S.C. § 5324(a) Structuring transactions to evade reporting requirements. Forfeiture of property involved in the structured transactions.
- 982 "White Collar" Transactions (Criminal Forfeiture). Also discussed in the text, this provision calls for the forfeiture of property "derived from or traceable to the proceeds of" the crime, as well as property "used to facilitate the commission of," or the conspiracy to commit, the crime. Forfeiture is made part of the sentence, upon criminal conviction for any of the crimes listed above under Section 981, as well as convictions under the following statutes (all sections are from Title 18 except where otherwise noted):
- 8 U.S.C. § 1324a(a) Employment of illegal aliens.
- 1425 Unlawful procurement of citizenship.
- 1426 Reproduction of citizenship or naturalization papers.
- 1427 Sale of citizenship or naturalization papers.
- 1541 Unauthorized issuance of passport.
- 1542 False statement in application and use of passport.
- 1543 Forgery or false use of passport.
- 1544 Misuse of passport.
- 1546 Fraud and misuse of visas, permits, and other documents.
- 1960 Illegal money transmitting business.
- 31 U.S.C. § 5316 Reporting on import and export of monetary instruments.
- 1165 Indian Land Protection. In addition to imprisonment, "all game, fish, and peltries in his possession" shall be forfeited.
- 1467 Obscene Materials. Person convicted shall forfeit (1) obscene material, (2) proceeds of the offense, and (3) any property used to commit the offense which, in the court's discretion, is proportional to the offense. This statute goes on at some length to detail protections for third parties, as well as seizure, execution, and disposition procedures.
- 1762 Illegal Transportation of Prison-Made Goods. Violator shall be fined and goods shall be forfeited "by like proceedings as those provided by law for the seizure and forfeiture of" illegally imported property.
- 1963 Racketeer Influenced and Corrupt Organizations (Criminal RICO penalties). Criminal forfeiture substance and procedure set forth in

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detail; tracking closely the parallel provisions at 21 U.S.C. § 853; discussed at in the text at pp. 10-14 and quoted at footnote 25.

- 2274 Misuse of Vessel. If misuse is with the knowledge of the owner or master, the vessel and its equipment "shall be subject to seizure and forfeiture in the same manner as merchandise is forfeited for violation of the customs revenue laws."
- 2318(d) Counterfeit Labels. Upon conviction, the court shall order forfeiture of all counterfeit labels and all articles to which such labels were, or were to be, affixed.
- 2344(c) Trafficking in Cigarettes. Contraband cigarettes shall be subject to forfeiture under the provisions of the Internal Revenue Code that apply to seizure and forfeiture of firearms.
- 2513 Intercepting devices. Devices used to violate laws against interception may be seized and forfeited under customs laws relating to seizure, disposition, remission and mitigation, compromise of claims, and awards to informers "insofar as applicable and not inconsistent with the provisions of this section." Although customs laws apply, they shall be carried out by Justice Department personnel.
- 3665 Possession of firearms during felony. The judgment of conviction may order the confiscation and disposal of firearms and ammunition found in the possession of the defendant. The court may direct delivery of the firearm to the law-enforcement agency which apprehended the defendant for its use or disposal.
- 3667 Liquor trafficking. All liquor involved in any violation, as well as vehicles and vessels used in transporting it, shall be forfeited in accordance with the internal revenue laws governing forfeitures.

Title 19 Customs

- 130 Importation in vessels of the U.S. or of the country of origin. All goods, wares, and merchandise illegally imported, as well as vessels, cargo, tackle and furniture, "shall be forfeited" under the procedures and regulations established by the "several revenue laws."
- 467-69 Marks, brands, or stamps on imported distilled spirits. Any container of imported spirits without such marks, brands, or stamps shall be, with its contents, forfeited. Stamps shall be removed upon emptying the container, otherwise, the container is forfeited. Anyone dealing in or using empty, but still stamped, containers shall forfeit both containers and contents.
- 1305 Prohibition on importation of immoral materials (obscene materials, materials advocating treason or threatening physical harm, etc.). Statute specifies enforcement procedures, initiated by the U.S. Attorney in federal district court. Any interested party may demand a jury trial.
- 1322(b) International (U.S.-Mexico) traffic and rescue work. Equipment brought into the country to do rescue and relief work are excepted from otherwise applicable customs laws; but if the equipment is used for other purposes, or not exported in a timely way, it shall be forfeited.
- 1338 Discrimination in trade by foreign countries. The president has power to impose trade restrictions and additional duties to address

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such discrimination. Imports that violate the president's restrictions are forfeitable under the procedures and regulations established by the "several revenue laws."

- 1453 Lading and unlading of merchandise or baggage. If lading is done without special license or permit, the master of the vessel or vehicle is liable to the value of the merchandise, and the merchandise shall be subject to forfeiture. If the value is \$500 or more, the vehicle or vessel shall also be subject to forfeiture.
- 1461-62 Baggage inspections. If the owner/agent of the baggage fails to submit to the customs officer's inspection, the officer can retain and open the container or vehicle. If the officer finds anything prohibited or subject to duty, the container and its entire contents are subject to forfeiture.
- 1463-64 Sealed vehicles and vessels. Violation of the regulations of the Secretary of the Treasury is a felony, punishable by imprisonment and fine, and the vessel or vehicle and its contents shall be forfeited.
- 1466(a) Equipment and repairs of vessels. If purchased in a foreign country, 50% ad valorem duty is due on return to U.S. Willful evasion results in seizure and forfeiture of the vessel, or a monetary amount up to the value thereof, as determined by the Secretary of the Treasury.
- 1497 Failure to declare. Penalties for failure to declare include forfeiture of the undeclared article, and a penalty equal to the value of the article (except controlled substances bring a penalty of 1000% of the value of the article).
- 1510(b) Failure to comply with summons to examine books. The Secretary of the Treasury may order customs officers to withhold delivery of merchandise imported by the person or for his account. If person remains in contempt for more than one year, withheld property may be sold at public auction.
- 1526 Import of merchandise bearing counterfeit trademark. Merchandise shall be seized and, absent written consent from the trademark owner, shall be forfeited for violation of customs laws. Upon seizure, the trademark owner is notified, then either the merchandise is destroyed, or, where feasible, the counterfeit trademark is obliterated and the merchandise is given to (1) government use (including state and local), (2) charitable interests, or (3) public auction, if no government or charitable use is found in one year's time.
- 1527 Wild mammals and birds (dead or alive) imported in violation of foreign law. Animals shall be subject to seizure and forfeiture under the customs laws. In the discretion of the Secretary of the Treasury, forfeited animals shall be placed with federal or state governments, societies or museums for exhibition or scientific purposes, or (in some cases) sold.
- 1584 Falsity or lack of manifest. Merchandise that is not included in a valid manifest is subject to forfeiture, in addition to criminal penalties against the master, owner or other responsible party.
- 1586 Unlawful unlading or transshipment. If any vessel unloads cargo before receiving a permit to do so, or transfers contraband or alcoholic beverages intended for the U.S. to a U.S. vessel on the high

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seas, criminal penalties apply and the vessel and merchandise shall be seized and forfeited.

- 1587 Examination of hovering vessels. If dutiable merchandise destined for the U.S. is found, the vessel and its cargo shall be seized and forfeited.
- 1588 Transportation between American ports via foreign ports. If done by a foreign vessel for the purpose of evading provisions for the transportation of merchandise between American ports, the vessel shall pay a tonnage duty and the merchandise shall be seized and forfeited.
- 1592(c)(6) Introducing merchandise into U.S. commerce by false documents or material omissions. If the Secretary of the Treasury has "reasonable cause" to believe this has been violated and that the person is insolvent or beyond U.S. jurisdiction, the merchandise may be seized and, unless the monetary penalty is paid, forfeited. The Secretary must return seized property if a deposit is made.
- 1594 Seizure of conveyances. Any vehicle, vessel, or aircraft used to violate customs laws may be held for the payment of the penalty, and may be seized, forfeited and sold in accordance with the customs laws. The proceeds of sale, beyond the penalty and the expenses, shall be held for the account of any interested party.
- 1595a Illegal imports. Conveyances and items used to facilitate illegal imports may be seized and forfeited.
- 1602-06 Procedures for customs seizures. Every seizure must be reported; search warrants under Fed. R. Crim. P are required; prosecution is by the Department of Justice; customs officers shall take custody of property and appraise it.
- 1607 Seizure of property valued at \$500,000 or less, prohibited articles (controlled substances) and their transporting conveyances. These may be seized with notice given by publication for three weeks.
- 1608-10 Administrative forfeiture. If no claim is filed in 20 days, the property is automatically forfeited. Upon filing of a timely claim, the matter is referred to the U.S. Attorney and judicial proceedings begin. Also, seized property that is not under section 1607 is referred to the U.S. Attorney.
- 1611-12 Summary sale. If the property is perishable it may be sold on an expedited schedule. The Secretary may transfer property to another customs district for sale.
- 1613 Disposition of proceeds of forfeited property. After sale, the monetary penalty and expenses are paid, and any excess is returned to the person against whom the penalty was assessed. Claimant may make application for remission of forfeiture.
- 1613b Customs Forfeiture Fund. A special fund is created in the U.S. Treasury for proceeds of forfeited property, which can be drawn upon by customs officials for various expenses of customs enforcement operations.
- 1614 Release of seized property. If a person with a substantial interest in the property offers to pay its value, the Secretary of the Treasury may release the property to that individual.

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- 1615 Burden of proof in forfeiture proceedings. Once probable cause is shown, by one of various prima facie showings, the burden is on the claimant.
- 1616a Disposition of forfeited property. Forfeiture proceedings may be discontinued in favor of State proceedings. Forfeited property may be retained for official use, transferred to another federal agency, to cooperating state law enforcement agencies, or (for non-jet-powered aircraft) to the Civil Air Patrol.
- 1617 Compromise of claims. Such compromise may be made by the Secretary of the Treasury.
- 1618 Mitigation and remission of penalties. This may be made if there is no "willful negligence" or wrongful intent on the part of the claimant.
- 1619-20 Compensation of informers. Informers may get up to 25% of net recovery, not to exceed \$250,000. It is a felony for a federal officer to take a kickback on such compensation.
- 1621 Statute of limitations. Forfeitures under the customs laws must commence within five years after discovery of the alleged offense.
- 1703 Seizure and forfeiture of vessels. If used for smuggling or to defraud the U.S. of revenue, the "vessel and its cargo shall be seized and forfeited."
- 2093 Pre-Columbian monumental or architectural sculptures and murals. Unlawful imports "shall be seized and subject to forfeiture under the customs laws."
- Title 21 Drugs and Controlled Substances**
- 334 Adulterated or misbranded food or drugs. Such property "shall be liable to be proceeded against on libel of information" and subject to judicial condemnation. Procedures for addressing multiplicity of pending proceedings, for disposition of goods after decree of condemnation, and for remission or mitigation.
- 467b Poultry products. Such products that are adulterated, misbranded, or otherwise unlawfully introduced into commerce, shall be "liable to be proceeded against and seized and condemned." Proceedings shall conform, as nearly as may be, to admiralty proceedings, except there is a right to jury trial. Condemned poultry may be given to charitable or government operations that distribute food free of charge.
- 673 Meat products. Similar provisions to section 467b.
- 824(f) Controlled substances. When the Attorney General suspends or revokes a registration, the substances held under the revoked registration "shall be forfeited."
- 848(a) Continuing Criminal Enterprises. Imposes criminal penalties including "the forfeiture prescribed in section 853."
- 853 Drug Felonies—Criminal Forfeitures. Procedures set forth in detail; discussed at in the text at pp. 10-14.

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- 881 Controlled Substances—Civil Forfeitures. Procedures set forth in detail; discussed in the text at pp. 15–16.
- Title 22 Foreign Relations and Intercourse**
- 401 Illegal export of war materials. If there is an attempt, or probable cause to believe someone intends to illegally export arms or munitions, the Secretary of the Treasury may seize it. All such materials, as well as vehicles, vessels, and aircraft used for such attempt, “shall be forfeited.” Customs laws apply “insofar as applicable and not inconsistent.” Disposition of forfeited property is by the Secretary of Defense.
- 1978 Importation of fish and wildlife products. The illegally imported products shall be forfeited. Customs laws apply “insofar as applicable and not inconsistent.”
- Title 26 Taxation**
- 5607 Unlawful use or concealment of distilled spirits. Prescribes criminal penalties including forfeiture of all personal property used in connection with the business, as well as the real property where the offense was committed.
- 5608 Fraudulent claim for drawback on distilled spirits or for relanding exported spirits. Prescribes criminal penalties, including forfeiture of triple the amount sought to be fraudulently obtained, and the ship or vessel where the shipment was made shall be forfeited “in admiralty by libel” whether or not there is a criminal conviction.
- 5612 Taxpaid distilled spirits remaining on bonded premises. If taxpaid spirits are allowed to remain on the premises, they will be forfeited as a penalty.
- 5613 Distilled spirits. Spirits not closed, marked, or branded as required by law shall be forfeited.
- 5614 Burden of proof. A claimant seeking return of seized spirits has the burden of proving that no fraud was committed and that the tax law has been complied with.
- 5615 Property subject to forfeiture. Unregistered still, distilling apparatus removed or set up without notice, distilled spirits produced in a vinegar plant, spirits unlawfully removed from place of manufacture, and spirits tainted with fictitious proof are all subject to forfeiture, as well as all spirits, materials, equipment, real property used, and personal property on the premises, when the distilling is done without giving bond or with intent to defraud.
- 5661(a) Violations relating to wine. Criminal penalties include forfeiture of “all products and materials used in any such violation.”
- 5671 Evasion of beer tax. Criminal penalties include forfeiture of beer and the equipment used to make it.
- 5681(c) No sign on distilled spirits plant. If the required sign is absent, anyone who works there and/or conveys spirits or materials therefor to or from the premises is guilty of a misdemeanor, and the vehicles, vessels, or aircraft used shall be forfeited.

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- 5683 Removal of liquor under improper brands. Violation is a misdemeanor, which includes among penalties the forfeiture of spirits, wine, beer and casks or packages.
- 5685(c) Firearms. Those possessed while violating liquor laws are forfeitable under section 5872.
- 5763 Tobacco operations. Improperly packaged tobacco products, or products held with intent to defraud shall be forfeited. When there is an intent to defraud, the personal property on the premises of the manufacturer or warehouse shall be forfeited. Illicit operators forfeit not only personal property but real property as well.
- 5872 Firearms involved in the violation of revenue laws. Such firearms are forfeitable under the provisions of internal revenue laws governing forfeiture of unstamped articles. Disposal is not by public sale, but by destruction, by sale to state or local authorities, or by transfer to federal authorities.
- 7301 Property held to defraud the U.S. Any property held for the purpose of sale or removal to defraud the U.S. of taxes legally owed shall be forfeited. This includes to raw materials, equipment, packaging and conveyances (vehicles, vessels, aircraft and draft animals) associated with the scheme to defraud.
- 7302 Property used in violation of internal revenue laws. It is unlawful to possess such property and no property rights vest in it. Search may be had under Title 18 and the Fed. R. Crim. P. Procedures for seizure and forfeiture are those of the internal revenue laws.
- 7303 Other property. Also subject to forfeiture are counterfeit stamps, falsely stamped packages, and fraudulent bonds and permits.
- 7321-22 Procedures for forfeitures under Internal Revenue Code. Authorizes seizure of forfeitable property and delivery to U.S. Marshal.
- 7323-24 Enforcement of forfeitures. Enforcement is by in rem action in District Court. Cost of seizure is taxable. Perishable goods may be sold, or returned on posting of a bond. Sale proceeds, after costs, are deposited with the court pending final decision.
- 7325-26 Personal property valued at \$100,000 or less. Property shall be appraised, and notice of seizure shall be published for three weeks. Any claimants to the property must post a \$2500 bond, upon which the matter is referred to the U.S. Attorney. If no claimants come forward, the property may be sold at public auction after giving reasonable notice of the sale. Coin-operated gaming devices may be destroyed.
- 7327 Remission and Mitigation. Customs laws apply.
- Title 27
206 Distilled Spirits
- Illegal bulk sales and bottling. Violation is a misdemeanor, but among the penalties is the forfeiture of spirits involved in the violation and their containers.

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Title 28 **Civil Procedure**

2461 Mode of recovery. Admiralty procedure applies to all civil forfeitures unless Congress indicates to the contrary; quoted in the text at p. 15.

Title 30 **Mining and Minerals**

184(h) Leases and Prospecting Permits. Unlawful leases may be canceled and the interest under the lease forfeited. Rights of bona fide purchasers are protected.

1466 Deep Seabed Mineral Resources. Vessels, equipment, and cargo involved in a violation shall be subject to forfeiture. Customs procedures apply "insofar as applicable and not inconsistent." Attorney General may seize forfeited property. Post of bond will stay process. Rebuttable presumption that anything on board the vessel is implicated.

Title 31 **Money and Currency**

5111 Coins. Coins that are exported, melted or treated shall be forfeited. Forfeitures enforced under Internal Revenue Code (26 U.S.C. § 7321, *et seq.*).

5317 Unreported monetary instruments. The instrument and any interest traceable to it may be seized and forfeited. Any property, real and personal, involved in the transaction or traceable to it may also be seized and forfeited.

Title 39 **Seized Mail**

606 Concealed letters. Packages containing unlawfully concealed letters shall be forfeited. Revenue laws apply.

Title 46 App. **Coast Guard and Documenting Vessels**

808(d) Unlawful charter, sale, or foreign registry. Vessel may be seized and forfeited.

835 Transfer of shipping facilities in time of war. If transfer is done without approval of Secretary of Commerce, the vessel, shipyard, dry-dock, etc. shall be forfeited.

883 Transportation of merchandise between points in the United States. Must be done in a U.S. vessel "on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof)"

883-1 Vessel documentation requirements. If a vessel transports merchandise in violation of this section, the merchandise shall be forfeited.

883a Reports of vessels rebuilt abroad. If the report is not made as required, the vessel and all tackle and equipment shall be forfeited. Remission and mitigation can be granted by the Secretary.

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Title 47 Communications Devices

- 510 Electronic devices. Devices intended to violate the laws governing radio transmission may be seized and forfeited. Admiralty procedure applies, except that seizure without such process may be made if incident to lawful arrest or search. Sale of forfeited property according to customs laws "insofar as applicable and not inconsistent." Proceeds go to the general fund of the U.S. Treasury.

Title 48 Territories and Possessions

- 1504 Alien land conveyances. Where an alien is not permitted to hold land, he may convey it; but if he attempts to convey the land "in trust" or otherwise tries to evade the prohibition on alien land holding, the conveyance shall be null and void and the lands shall be forfeited and escheat.

Title 50 App. Trading with the Enemy

- 5 Wartime transactions. During time of war, the President may regulate, compel, void, or prohibit any transaction with foreign entities, and the property involved shall be held, used, or disposed of for the benefit of the U.S.
- 6 & 12 Alien Property Custodian. All money owed to an enemy shall go to the alien property custodian, who, with the power of a trustee, may liquidate property by public sale, with proceeds deposited in the U.S. treasury.
- 16 Forfeiture of property. Property, funds, or vessels concerned in a violation of the Trading with the Enemy Act "shall be forfeited" to the U.S. upon direction of the Secretary of the Treasury after an agency hearing, with judicial review provided under 5 U.S.C. § 702. Also, upon conviction, they may be forfeited.